**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**C.R.No. 822 of 2004**
**Date of decision : 31.1.2007**

Municipal Corporation, Faridabad & Anr.

.....Petitioners.

Versus

Suresh & Ors.

.....Respondents.

**CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA**

Present : Mr. M.K. Sood ,Advocate
for the petitioners.

Mr. Sumeet Mahajan, Advocate
for respondents No. 1 to 3.

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**VINOD K. SHARMA,J.( ORAL )**

The present revision petition has been filed against the order dated 11.11.2003 passed by the learned Addl. District Judge, Faridabad vide which application moved by the defendant-petitioners for making good the deficiency in Court fee has been rejected and one filed by the plaintiff-respondents for rejection of the appeal of the defendants-petitioners was accepted.

The petitioners have challenged the judgment and decree passed by the learned Civil Judge (Jr.Divn.), Faridabad before the learned Addl. District Judge, Faridabad. The appeal filed was not properly assessed for the purposes of Court fee. This led to the respondent-plaintiff to file the application dated 3.3.2003 for rejection of the appeal. During the pendency of the said application, the petitioners moved another application dated 7.11.2003 for making good the deficiency in Court Fee. The reason for

moving the said application was that the court fees was affixed as per the decree-sheet prepared by the learned trial Court and the petitioners were not aware of the fact that subsequently deficiency in court fee had been made good as per the directions of the learned trial Court and accordingly the court fees payable on appeal was Rs.12,370/-,which was not affixed by the petitioners at the time of filing of the appeal. The petitioner has sought enlargement of time under Sections 148,149 read with section 151 of the Code of Civil Procedure. In that application provisions of Order 7 Rule 11 C.P.C. were also invoked. The learned Addl. District Judge, Faridabad rejected the application made by the petitioners in view of the law laid down by the Full Bench of this Court in the case of ***Raj Kumar alias Prithvi Singh and another Vs. Amar Singh and others 1980(2) ILR (P&H) 463***. In the said judgment the Hon'ble Full Bench was pleased to hold that the provisions of Order 7 Rule 11 C.P.C. are not applicable to the appeal and, therefore, it is always open to the appellate Court to reject the appeal straightway without giving opportunity to the appellant to make good the deficiency in the court fees.

The contention of the petitioners that the appellate Court had jurisdiction to extend the time to make good the deficiency in Court fee under provisions of Section 149 C.P.C, has been rejected by holding that no law has been cited on that point. The learned appellate Court has also held that no sufficient grounds have been shown to make good the deficiency in the Court fee. The learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Mahasay Ganesh Prasad Ray and another Vs. Narendra Nath Sen and others A.I.R. 1953 S.C.431*** to contend that the Court under Section 149 C.P.C. has the

discretion to enlarge the time for making good the deficiency in the Court fee. He has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Mahanth Ram Das Vs. Ganga Das A.I.R. 1961 S.C. 882*** to contend that the Court can extend time under Sections 148,149 read with Section 151 of the Code of Civil Procedure to make good the deficiency in court fee, even if time fixed earlier for this purpose has expired.

In view of what has been stated above, the finding of the learned lower appellate Court that it had no discretion to extend the time to make good the deficiency in Court fee cannot be sustained. It has to be further noticed that extension of time to make good the Court fee is discretion with the Court and normally the exercise of discretion is not to be interfered in exercise of revisional jurisdiction, however, in the present case keeping in view the fact that that the respondent has fairly conceded that the petitioner be granted one opportunity to make good the deficiency of Court fee and further more the extension in time would only result in deciding the case on merit.

I set aside the impugned order and permit the petitioner to make good the Court fee within the time to be fixed by the learned lower appellate Court.

The learned counsel for the respondent further submits that co-respondents, who had contested the case on merit have lost before the learned lower appellate Court as well as before this Court as the second regular appeal also stands dismissed. Thus, keeping in view the matter

seems to be covered, the learned lower appellate Court may expedite the hearing of the appeal and dispose of the same preferably within a period of six months.

31.1.2007 **( VINOD K. SHARMA )**
**'sp'** **JUDGE**